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BOOK REVIEWS

INTERNATIONAL LAW. By L. OPPENHEIM. Vol. II. WAR AND NEUTRALITY. Edited by RONALD F. ROXBURGH. London: LONGMANS, GREEN AND CO. 1921. pp. xlvi, 671.

With the appearance of the second volume of Oppenheim's *International Law*, volume one of which was published last year, the English-speaking world has its first standard text revised to include the modifications of international law resulting from the war and the peace treaties. The League of Nations, as an agency for the settlement of state differences (pp. 34-38), as inaugurating a new means of compulsion—economic boycott (p. 61), and as offering new facilities for securing legitimate warfare (p. 335) receives extensive consideration in this volume in addition to the general treatment in volume one. In regard to the latter matter, after noting that recent wars "have clearly demonstrated that new means must be found to compel belligerents to conduct war within the limits of the laws of war" (p. 332), the author writes: "It would seem that the only way in which in the future such violations can be prevented, is by making it a duty of the League of Nations to exercise intervention in case a belligerent violates fundamental principles of law concerning the conduct of war" (p. 335).

The leading prize cases and diplomatic notes of the war are examined, though their conclusions are not indiscriminately accepted. Thus in spite of the opinion of the Judicial Committee of the Privy Council in *The Leonora*[1] the author holds that the Order in Council of February 16, 1917 "was *ultra vires* because it threatened punishment and assumed jurisdiction over neutral ships for acts which, according to International Law, are perfectly legitimate" (p. 428). The whole discussion of the legitimacy of belligerent reprisals adversely affecting neutrals well illustrates the balance of Oppenheim's judgment (pp. 425-28). Among other conclusions on points raised during the war, mention may be made of his repudiation of the German doctrine of *Kriegsrasion* (pp. 90-91), his approval of the use of hostages to prevent illegitimate acts such as train wrecking, by the inhabitants of occupied territory (p. 352), his opinion that soldiers may not be punished for illegal acts committed under orders of their commanders (p. 342), and his continued support of the terms "war crime" and "war treason" which engaged him in debate with other British jurists during the war (pp. 72, 342, 346). After listing four factors which have tended to obliterate the distinction between armed forces and civilians (p. 73) he concludes:

"There is no doubt—the World War has made it obvious—that this distinction, and also the moderating influences of chivalry and humanity, again threaten to disappear. Conscription, with its consequences that wars are fought by whole nations in arms, and war passions infect all belligerent subjects, threatens to overthrow the barriers against excesses which the professional soldiery of the eighteenth and nineteenth centuries, and the Hague Peace Conferences of 1899 and 1907, attempted to erect."

Oppenheim, however, was not pessimistic in regard to the future of the law of war. "Some notes," writes his editor, "intended for his preface show with what force he would have argued against the prevalent impression that the war has made an end of the laws of war" (p. v). The book does not detail violations of the law during the war. "He intended," writes the editor, "to in-

[1] (1918) 3 B. & C. P. C. 385.

troduce the events of the war when they illustrated, extended, or challenged general principles hitherto accepted. But for the history of the war he would have relied on his friend Garner's *International Law and the World War,* which he had already read in manuscript" (p. v). Frequent references to this work have been supplied in footnotes.

The merits of Oppenheim's book, the first edition of which appeared in 1905, are too well known to require comment. This edition reveals that he kept a judicial balance during the war and after. With the work of the editor, we find grounds for serious criticism. The text of a standard author should be sacred after his death. Phillipson's Wheaton (1916) was criticised on this score.[2] It gives the reader a start to find in the text, following a query as to the future development of the law, "The author did not live to express an opinion" (p. 9). Where does Oppenheim leave off and Roxburgh begin? There is nothing to indicate except the statement in the preface, of paragraphs amended or added by the editor. Brackets, distinguishing the editor's work could easily be inserted as in Higgin's Hall (1917), though we would prefer to have the editor confine himself to footnotes as did Dana in editing Wheaton. It is true that Mr. Roxburgh's task was made difficult through his desire to incorporate suggestions and opinions which Oppenheim had verbally expressed before his death. This, however, could always have been accomplished by footnotes as it is in some cases (pp. 82 n. 1, 277 n. 1, 336 n. 3). The student who desires to quote Oppenheim, will regret the form of this edition which renders it difficult to do so with confidence.

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HANDBOOK OF PRACTICE UNDER THE CIVIL PRACTICE ACT OF NEW YORK. By CARLOS C. ALDEN. New York: BAKER, VOORHIS & Co. 1921. pp. 340.

A more appropriate title could not well have been devised for this exceptionally thorough and complete compendium of general practice and procedure under the New York Civil Practice Act. While intended primarily for law students, this little book will no doubt be found very helpful to lawyers who wish to understand the changes brought about by the Civil Practice Act and the Rules of Civil Practice, and also refresh their recollection, as it were, on matters of New York procedure generally.

The order and arrangement of the subject matter is excellent and the condensation of the material, without resort to either abbreviations or to a cryptic and disagreeable style, is quite remarkable. Nor has the author committed the fault, so glaring in several works of a similar character, of merely repeating the sometimes intricate language of the Practice Act and the Rules. The chapter on the Statute of Limitations and the discussion of the trial practice, as well as the treatment of pleadings generally, are models of accuracy and brevity.

The few errors, which were perhaps inevitable in a work of this character, were due largely to modifications of the law by the Civil Practice Act, which only very careful checking and comparison would reveal. For example (p. 47) an order may now be made dispensing with delivery of a copy of the summons to an incompetent person, not only where there is proof that such delivery might tend to aggravate his malady, but for any proper reason, in the discretion of the court. It would also seem that the rule of the Code of Civil Procedure as to costs in contract actions in the Supreme Court, where the recovery is less than $50, has been changed, even if it be true, as it probably is, that the legislature

[2] (1916) 10 American Journ. Int. Law 664.